

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

11 TIMOTHY L. BACINO, an ) Civil No. 08cv1239 DMS(RBB)  
12 individual; SUSANNE V. BACINO, )  
13 an individual, ) NOTICE AND ORDER FOR EARLY  
14 Plaintiffs, ) NEUTRAL EVALUATION CONFERENCE  
15 v. )  
16 USAA CASUALTY INSURANCE )  
17 COMPANY; DOES 1-10, )  
18 Defendants. )  
19 \_\_\_\_\_ )

18 IT IS HEREBY ORDERED that an early neutral evaluation of your  
19 case will be held on September 8, 2008, at 8:30 a.m. in the  
20 chambers of United States Magistrate Judge Ruben B. Brooks, United  
21 States Courthouse, 940 Front Street, Room 1185, San Diego,  
22 California.

23 Pursuant to Rule 16.1(c) of the Local Rules of the United  
24 States District Court for the Southern District of California, all  
25 parties, claims adjusters for insured Defendants and non-lawyer  
26 representatives with full and unlimited authority<sup>1</sup> to enter into a

28 <sup>1</sup> "Full authority to settle" means that the individuals at the settlement conference be authorized to fully explore settlement options and to agree at that time to any settlement terms

1 binding settlement, as well as the principal attorneys responsible  
 2 for the litigation, must be present and legally and factually  
 3 prepared to discuss and resolve the case. Corporate counsel shall  
 4 not appear on behalf of a corporation as the party representative  
 5 who has the authority to negotiate and enter into a settlement.  
 6 Failure to attend or obtain a proper excusal will be considered  
 7 grounds for sanctions. (Where the suit involves the United States  
 8 or one of its agencies, only counsel for the United States with  
 9 full settlement authority need appear.) (If Plaintiff is  
 10 incarcerated in a penal institution or other facility, the  
 11 Plaintiff's presence is not required and Plaintiff may participate  
 12 by telephone. In that case, defense counsel is to coordinate the  
 13 Plaintiff's appearance by telephone.)

14 Plaintiff's(s') counsel shall give notice of the early neutral  
 15 evaluation conference to all defendants filing an answer after the  
 16 date of this notice.

17 All conference discussions will be informal, off the record,  
 18 privileged and confidential. Absent good cause shown, if any  
 19 party, counsel or representative fails to promptly appear at the  
 20 settlement conference, fails to comply with the terms of this  
 21 Order, including the failure to timely provide the settlement  
 22 conference memoranda WHEN REQUESTED, is substantially unprepared to  
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24 acceptable to the parties. Heileman Brewing Co., Inc. v. Joseph  
Oat Corp., 871 F.2d 648 (7th Cir. 1989). The person needs to have  
 25 "unfettered discretion and authority" to change the settlement  
 26 position of a party. Pitman v. Brinker Int'l, Inc., 216 F.R.D.  
 481, 485-86 (D. Ariz. 2003). The purpose of requiring a person  
 27 with unlimited settlement authority to attend the conference  
 includes that the person's view of the case may be altered during  
 28 the face-to-face conference. Pitman at 486. A limited or a sum  
 certain of authority is not adequate. Nick v. Morgan's Foods,  
Inc., 270 F.3d 590 (8th Cir. 2001).

1 meaningfully participate in the settlement conference, or fails to  
2 participate in good faith in the settlement conference, the  
3 settlement conference may be vacated and sanctions may be imposed  
4 pursuant to Rules 16(f) and 37(b)(2)(B), (C), and (D), Federal  
5 Rules of Civil Procedure.

6 In the event the case does not settle at the early neutral  
7 evaluation conference, the parties shall also be prepared to  
8 discuss the following matters at the conclusion of the conference:

- 9 1. Any anticipated objections under Federal Rules of Civil  
10 Procedure 26(a)(1)(E) to the initial disclosure provisions of  
11 Federal Rule of Civil Procedure 26(a)(1)(A-D);  
12 2. The scheduling of the Federal Rule of Civil Procedure 26  
13 (f) conference;  
14 3. The date of initial disclosure and the date for lodging  
15 the discovery plan following the Rule 26(f) conference; and  
16 4. The scheduling of a case management conference pursuant to  
17 Federal Rule of Civil Procedure 16(b).

18 The Court will issue an order following the early neutral  
19 evaluation conference addressing these issues and setting dates as  
20 appropriate.

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1 Questions regarding this case may be directed to the  
2 magistrate judge's research attorney at (619) 557-3404.

4 || Dated: August 12, 2008

*Ruben Brooks*  
RUBEN B. BROOKS  
United States Magistrate Judge

cc: All Parties of Record

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27 A Notice of Right to Consent to Trial Before a United States  
Magistrate Judge is attached for your information.

1                   **NOTICE OF RIGHT TO CONSENT TO TRIAL BY UNITED STATES**  
2                   **MAGISTRATE JUDGE**

3                   In accordance with the provisions of 28 U.S.C. § 636(c), you  
4 are hereby notified that a United States Magistrate Judge of this  
5 district may, upon the consent of all parties, conduct any or all  
6 proceedings, including a jury or non-jury trial, and order the  
7 entry of a final judgment. Consent forms are available in the  
8 Clerk's office. Counsel for the Plaintiff shall be responsible for  
9 obtaining the consent of all parties, should they desire to  
10 consent.

11                  You should be aware that your decision to consent or not to  
12 consent is entirely voluntary and should be communicated solely to  
13 the Clerk of the Court. Only if all parties consent will the  
14 district judge or magistrate judge to whom the case has been  
15 assigned be informed of your decision.

16                  Judgments of the United States Magistrate Judges are  
17 appealable to the United States Court of Appeals in accordance with  
18 this statute and the Federal Rules of Appellate Procedure unless  
19 the parties at the time of their consent to trial before a  
20 magistrate judge agree upon review by the United States District  
21 Court.

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